



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R02-OAR-2018-0681, FRL-10003-11-Region 2]

#### **Approval of Air Quality Implementation Plans; New Jersey; Infrastructure SIP for Interstate Transport Requirements for the 2006 PM<sub>10</sub>, 2008 Lead, 2010 Nitrogen Dioxide, and 2011 Carbon Monoxide National Ambient Air Quality Standards**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve the portions of New Jersey's State Implementation Plan (SIP) revision submittal regarding infrastructure requirements for interstate transport of pollution with respect to the 2006 particulate matter of 10 microns ( $\mu\text{m}$ ) or less (PM<sub>10</sub>), 2008 lead, 2010 nitrogen dioxide (NO<sub>2</sub>), and 2011 carbon monoxide (CO) National Ambient Air Quality Standards (NAAQS).

**DATES:** Written comments must be received on or before **Insert date 30 days after date of publication in the Federal Register**.

**ADDRESSES:** Submit your comments, identified by Docket ID Number **EPA-R02-OAR-2018-0681** at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment.

The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

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**I. Background**

*A. General*

The EPA is proposing to approve the portions of the State of New Jersey's Infrastructure SIP

submission, dated October 17, 2014, which address the Clean Air Act (CAA) section 110(a)(2)(D)(i)(I) requirements pertaining to interstate transport of pollution with respect to the 2006 PM<sub>10</sub>, 2008 lead, 2010 NO<sub>2</sub>, and 2011 CO National Ambient Air Quality Standards (NAAQS).

On September 21, 2006 (71 FR 61144 (October 17, 2006)), the EPA retained<sup>1</sup> the primary and secondary 24-hour PM<sub>10</sub> standard of 150 micrograms per cubic meter of air (µg/m<sup>3</sup>), as an average over a 24-hour period, not to be exceeded more than once per year on average over a 3-year period, that was initially promulgated on June 2, 1987 (52 FR 24634 (July 1, 1987)).

On October 15, 2008 (73 FR 66964 (November 12, 2008)), the EPA promulgated a revised primary and secondary NAAQS for lead. The 2008 lead NAAQS level is 0.15 µg/m<sup>3</sup>, and the averaging time is a rolling 3-month period with a maximum (not-to-be-exceeded) form to be evaluated over a 3-year period.

On January 22, 2010 (75 FR 6474 (February 9, 2010)), the EPA promulgated a new 1-hour primary NAAQS for NO<sub>2</sub> at a level of 100 parts per billion (ppb), based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations.

On August 12, 2011 (76 FR 54294 (August 31, 2011)), the EPA retained the existing primary standard for CO of 9 ppm as an 8-hour average, and 35 ppm as a 1-hour standard average, neither to be exceeded more than once per year. The EPA initially established a NAAQS for CO on April 30, 1971 (36 FR 8186).

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<sup>1</sup> The PM<sub>10</sub> standard was also retained on December 14, 2012 (78 FR 3086 (January 15, 2013)), but that is not being addressed in this action

### *B. EPA's Infrastructure Requirements*

Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This particular type of SIP submission is commonly referred to as an “infrastructure SIP.” These submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), the EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. The EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.<sup>2</sup> Unless otherwise noted below, we are following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state's SIP for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.<sup>3</sup> The EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

### *C. Interstate Pollution Transport Requirements*

Section 110(a)(2)(D)(i)(I) of the CAA requires a state's SIP to include adequate provisions

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<sup>2</sup> EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013 Infrastructure SIP Guidance (available at [https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance\\_on\\_Infrastructure\\_SIP\\_Elements\\_Multipollutant\\_FINAL\\_Sept\\_2013.pdf](https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf)), as well as in numerous agency actions, including EPA's prior action on New Jersey's infrastructure SIP submitted on October 17, 2014 that addressed the portion of the submission not germane to transport to address 2008 Lead, 2008 Ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, 2012 PM<sub>2.5</sub> NAAQS, 2006 PM<sub>10</sub> and 2011 CO NAAQS (83 FR 24661( May 30, 2018))

<sup>3</sup> See U.S. Court of Appeals for the Ninth Circuit decision in *Montana Environmental Information Center v. Thomas*, 902 F.3d 971 (Aug. 30, 2018)

prohibiting any emissions activity in one state that contributes significantly to nonattainment, or interferes with maintenance, of the NAAQS in any downwind state. The EPA sometimes refers to these requirements as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance), or jointly as the “good neighbor” provision of the CAA. Further information can be found in the Technical Support Document (TSD) for this rulemaking action, which is available online at [www.regulations.gov](http://www.regulations.gov), Docket number EPA-R02-OAR-2018-0681.

## **II. Summary of SIP Revision and EPA Analysis**

On October 17, 2014 New Jersey submitted, through the New Jersey Department of Environmental Protection (NJDEP), a revision to its SIP to address requirements under section 110(a)(2) of the CAA (the infrastructure requirements) related to the 2008 Lead, 2008 Ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS. Although not specifically required by 110(a)(1), since neither NAAQS was new or revised, the October 17, 2014 SIP submittal also included infrastructure requirements for the 2006 PM<sub>10</sub> and 2011 CO NAAQS.

On May 30, 2018 the EPA addressed the portion of New Jersey’s October 17, 2014 submission not germane to transport, including: 110(a)(2)(A), 110(a)(2)(B), 110(a)(2)(C), 110(a)(2)(E), 110(a)(2)(F), 110(a)(2)(G), 110(a)(2)(H), 110(a)(2)(J), 110(a)(2)(K), 110(a)(2)(L), and 110(a)(2)(M) for all submitted NAAQS (i.e., 2008 Lead, 2008 Ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, 2012 PM<sub>2.5</sub> NAAQS, 2006 PM<sub>10</sub> and 2011 CO NAAQS).<sup>4</sup> In the same action, the EPA addressed CAA element 110(a)(2)(D)(ii), Interstate and International Pollution Abatement, for all NAAQS addressed in the SIP submittal.

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<sup>4</sup> 83 FR 24661(May 30, 2018)

The EPA acted on CAA element 110(a)(2)(D)(i)(II) prong 3 (interstate transport provisions for the Prevention of Significant Deterioration) and prong 4 (interstate provisions for visibility) on September 19, 2016 for all NAAQS addressed in the SIP submittal. In the September 19, 2016 rulemaking, the EPA disapproved prong 3 and approved prong 4.<sup>5</sup>

The EPA acted on 110(a)(2)(D)(i)(I) for the interstate transport pollution requirements portion of the New Jersey October 17, 2014 submittal with respect to the 2012 PM<sub>2.5</sub> NAAQS, finalizing approval on August 14, 2018.<sup>6</sup>

With respect to the 2008 ozone NAAQS, New Jersey withdrew the 110(a)(2)(D)(i)(I) for the interstate transport pollution requirements portion of the October 17, 2014 submission in a letter to the EPA on March 30, 2016. New Jersey subsequently submitted a SIP revision addressing 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS (as well as the 2015 ozone NAAQS) on May 13, 2019. The EPA will address New Jersey's May 13, 2019 SIP submittal in a separate action at a later date.

The EPA is not acting on 110(a)(2)(D)(i)(I) for interstate transport pollution with respect to the 2010 SO<sub>2</sub> NAAQS and will address it in another action.

This proposed rulemaking action addresses the portions of New Jersey's infrastructure submittal for the 2006 PM<sub>10</sub>, 2008 lead, 2010 NO<sub>2</sub>, and 2011 CO NAAQS that pertain to transport requirements of CAA section 110(a)(2)(D)(i)(I).

The portions of New Jersey's October 17, 2014 SIP submittal addressing section 110(a)(2)(D)(i)(I) set forth New Jersey's position that it does not significantly contribute to

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<sup>5</sup> 81 FR 64070 (September 19, 2016)

<sup>6</sup> 83 FR 40151 (August 14, 2018)

nonattainment in, or interfere with maintenance by, any other state with respect to the 2006 PM<sub>10</sub>, 2008 lead, 2010 NO<sub>2</sub>, and 2011 CO NAAQS. Additionally, New Jersey described in its submittal its existing SIP-approved control measures, and other federally enforceable control measures, such as consent decrees and federal rules that apply to 2006 PM<sub>10</sub>, 2008 lead, 2010 NO<sub>2</sub>, and 2011 CO sources within the State.

In our analysis of New Jersey's SIP submission with respect to the 2006 PM<sub>10</sub>, 2008 lead, 2010 NO<sub>2</sub>, and 2011 CO NAAQS, the EPA considered ambient air quality data, the proximity of nearby nonattainment and maintenance areas, and emission trends.

With respect to the 2008 lead NAAQS, the EPA's evaluation indicates that there are no violating air quality monitors near New Jersey borders, or in New Jersey. Ambient air quality data is well below the NAAQS. There are no nearby nonattainment or maintenance areas in nearby states. Additionally, there are no significant lead sources in New Jersey near the State borders.

Regarding the 2006 PM<sub>10</sub> NAAQS, the EPA's evaluation indicates that there are also no violating air quality monitors near New Jersey borders, or in New Jersey. Ambient air quality data is well below the NAAQS. There are no nearby nonattainment and maintenance areas for the 24-hour PM<sub>10</sub> NAAQS, and emissions continue to trend downward.

With respect to the 2010 NO<sub>2</sub> NAAQS, the EPA's evaluation indicates that there are also no violating air quality monitors near New Jersey borders, or in New Jersey. Ambient air quality data is well below the NAAQS. There are no nearby nonattainment and maintenance areas. New Jersey NO<sub>2</sub> emissions continue to trend downward and are projected by the EPA to further decrease by 2023.

For the 2011 CO NAAQS, the EPA's evaluation indicates that there are also no violating air

quality monitors near New Jersey borders, or in New Jersey. Ambient air quality data is well below the NAAQS. There are no nearby CO nonattainment areas. Nearby maintenance areas in neighboring states have maintained the NAAQS for close to two decades. CO emissions continue to trend downward, and additional mobile emissions reductions are projected by 2030 as a result of Federal Tier 3 standards.

The EPA therefore proposes to approve New Jersey's infrastructure SIP submittal for CAA section 110(a)(2)(D)(i)(I) for the 2006 PM<sub>10</sub>, 2008 lead, 2010 NO<sub>2</sub>, and 2011 CO NAAQS.

A detailed summary and explanation of EPA's review and rationale for the proposed approval of this SIP revision as meeting the CAA section 110(a)(2)(D)(i)(I) requirements for the 2006 PM<sub>10</sub>, 2008 lead, 2010 NO<sub>2</sub>, and 2011 CO NAAQS may be found in the TSD.

### **III. Proposed action**

The EPA is proposing to approve New Jersey's infrastructure submittal dated October 17, 2014, addressing interstate transport for the 2006 PM<sub>10</sub>, 2008 lead, 2010 NO<sub>2</sub>, and 2011 CO NAAQS as these portions meet the requirements in section 110(a)(2)(D)(i)(I) of the CAA.

### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed



by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rulemaking action, pertaining to New Jersey's section 110(a)(2) infrastructure requirements for the 2006 PM<sub>10</sub>, 2008 lead, 2010 NO<sub>2</sub>, and 2011 CO NAAQS is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental Relations, Nitrogen dioxide, Lead, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

**Authority:** 42 U.S.C. 7401 et seq.

Dated: November 25, 2019.

Peter D. Lopez,

Regional Administrator,  
Region 2.

